IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 158 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

SHRI BUDHILAL HIRALAL RANA,

Appearance:

1. INCOME TAX REFERENCE No. 158 of 1989
MR MANISH R BHATT for Petitioner No. 1
DS AFF.NOT FILED (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 19/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following two

questions of law are referred to this Court for its opinion for assessment years 1980-81 and 1981-82 :-

1. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in law in setting aside the order made by the CIT u/s. 263 of the I.T. Act, 1961 ?

2. Whether, the Tribunal is right in law and on facts in holding that even if there is an omission or mistake with regard to certain items it was not proper as found in the assessment order to set aside the whole assessment ?

2. Heard Mr Manish Bhatt, the learned senior standing counsel appearing for the revenue. Nobody appears on behalf of the respondent-assessee. Since we are deciding this reference in favour of the assessee even if the office endorsement shows that the respondent is not served, no prejudice will be caused to the assessee by virtue of his absence in the present reference. For assessment year 1980-81, the return of income was filed by the assessee on 13.1.1983 and notice under Section 143(2) of the Act was issued which was duly complied with and necessary details were furnished and proper explanation was also given in response to the said notice. The Income-tax Officer has framed the assessment determining the total income of Rs.10,990/-.

For assessment year 1981-82, the return of income was filed on 13.1.1983 and notice under Section 143(2) of the Act was issued which was duly complied with and necessary details were furnished and proper explanation was also given in response to the said notice. The Income-tax Officer has framed the assessment determining the total income of Rs.19,110/-.

The Commissioner of Income-tax (Inv.) vide his order dated 28.11.1984 has passed a common order for assessment years 1980-81 and 1981-82 under Section 263 of the Act and set aside both the assessment orders passed by the Income-tax Officer with a direction to pass fresh orders after carrying out necessary investigation. Pursuant to the order passed by the Commissioner of Income-tax (Inv.) under Section 263 of the Act, the Income-tax Officer framed fresh assessments for assessment years 1981-82 and 1982-83 on 30.3.1985 determining the total income at Rs.25,270/- and Rs.53,440/- respectively.

The assessee has challenged the said fresh assessment orders before the Appellate Assistant Commissioner, Ahmedabad and he vide his order dated 31.1.1986 again set aside the assessment orders for both the assessment years.

It is pertinent to note here that the assessee has preferred appeals before the Tribunal against the order passed by the Commissioner of Income-tax under Section 263 of the Act and while disposing of the appeals of the assessee, the Tribunal has come to the conclusion that there is no material brought on record to justify that there was an error or omission or failure on the part of the Income-tax Officer so as to make the order erroneous. The Tribunal has further observed that apart from the fact that such order is also to be prejudicial to the interest of the revenue. The Tribunal has, therefore, set aside the order passed by the Commissioner under Section 263 of the Act. It is that order of the Tribunal which is under challenge in the reference before us.

3. Similar question in involved in the case of M/s. Arvind Jewellers, Ahmedabad in which the assessee was a partnership firm. Today we have disposed of that reference filed by the revenue against the order of the Tribunal in the case of M/s Arvind Jewellers, Ahmedabad and in the said order we have upheld the order of the Tribunal and decided the reference in favour of the assessee.

Since the identical issue is involved and since the Tribunal has referred to the order of the present assessee while disposing of the appeal of M/s Arvind Jewellers, we are of the view that the reference would meet with the same fate.

4. Following our decision in CIT vs. M/s Arvind Jewellers being ITR No. 174 of 1989, we are of the view that the Tribunal was right in setting aside the order under Section 263 of the Act. We are also of the view that even if there is an omission or mistake with regard to certain items, it was not proper as found in the assessment order to set aside the whole assessment.

In this view of the matter, we answer both the questions referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference is disposed of accordingly with no

order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-